



## WISCONSIN SUPREME COURT

Wednesday, May 28, 2003

9:45 a.m.

02-0815

Crystal Lake Cheese Factory v. LIRC and Susan Catlin

*This is a review of a decision of the Wisconsin Court of Appeals, District III (headquartered in Wausau), which affirmed a ruling of the Barron County Circuit Court, Judge James C. Eaton presiding.*

In this case, the Wisconsin Supreme Court will decide whether an employer has a duty to create a different job for an employee who is no longer able to perform his/her old job because of a disability.

Here is the background: On Nov. 3, 1996, Susan Catlin, who was then 36 years old and a single mother to her 11-year-old son, was involved in a car accident that left her a quadriplegic with some movement in her upper body but no ability to use her legs.

At the time of the accident, Catlin had worked full-time at Crystal Lake Cheese Factory for 15 months and was earning about \$1,400 per month. Her mother and sister were also employed at the factory. Catlin was a department head, supervising a four-person packing crew in the warehouse. Her main tasks were gathering store orders and making a sheet of directions for the cutters, indicating the sizes and types of cheese to be cut that day. However, she also was required to fill in for any absent employee on the warehouse crew, so she had to be able to perform a variety of tasks, including lifting 40-pound blocks of cheese, climbing ladders, driving a forklift, operating a vacuum bag sealer, and more. This work all took place in a 1940s addition to the original cheese factory, which was built in 1897.

Catlin believed that she was ready to return to work in September 1997 and she contacted Crystal Lake President Tony Curella, who had told her immediately following the accident that her job would be available for her “no matter what.” Curella, however, did not return Catlin’s phone calls. She was not aware that she had been terminated until she received instructions for withdrawing funds from her retirement plan.

Catlin pursued the company, and eventually two experts toured the factory and examined the requirements of the job to determine how her disability might be accommodated. They concluded that some of the warehouse tasks were going to be impossible for her and that the job as it had existed was no longer workable for her. One of the experts recommended that Catlin’s job description be altered to allow her to do paperwork, packaging, and other clerical tasks but the factory owner declined to create this new position.

Catlin filed a complaint with the state, alleging that Crystal Lake had violated the Wisconsin Fair Employment Act. A hearing examiner, called an administrative law judge, heard the matter and ruled in favor of Crystal Lake. The state Labor and Industry Review Commission (LIRC) reversed that ruling, finding that Crystal Lake had discriminated against Catlin by failing to offer a reasonable accommodation for her disability. This accommodation would have consisted of changing her job responsibilities. Crystal Lake appealed to the Barron County Circuit Court and then to the Court of Appeals, and both affirmed the LIRC ruling.

Crystal Lake has now come to the Supreme Court. Also taking an active interest in this case are the Wisconsin Cheese Makers Association, Inc., and the Wisconsin Manufacturers and Commerce, Inc. They have filed *amicus*, or “friend of the court,” briefs that focus on several areas of concern in the Court of Appeals’ opinion, including:

- The declaration that an employer who decides not to modify a job must demonstrate how making these modifications would create a hardship; and
- The creation of a standard that says an employee must be able to perform “some or most” of the duties of a given job in order for the employer to be responsible for modifying the job to fit the person’s needs.

The Supreme Court will decide whether an employer may be required to create a different job in order to accommodate an employee’s disability.